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September 10, 2008

DRAFT

BY E-FILING

The Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
Office of the Secretary
395 E Street SW
Washington, DC 20423-0001

Re: STB Docket No. FD 35087 Canadian National Railway Company
and Grand Trunk Corporation's Acquisition of Control of the
EJ&E West Company

Dear Acting Secretary Quinlan:

Thank you for this opportunity to comment on the draft Environmental Impact Statement (EIS) for the proposed Canadian National Railway Company's (CN) acquisition of the EJ&E-West Company (EJ&E). These are the official comments for the Chicago Metropolitan Agency for Planning (CMAP) as authorized by the CMAP Board on September 10, 2008. Formed in 2005, CMAP integrates planning for land use and transportation in the seven counties of northeastern Illinois which have an estimated population of 8.5 million people and includes 283 municipalities. The region is expected to grow by 2.8 million residents and 1.8 million jobs by 2040. We work closely with local governments, transportation providers (both public and private), environmental agencies, business leaders and advocacy groups, among other interests. For more information, please see our website (www.cmap.illinois.gov) or contact the undersigned.

The movement of goods through the Chicago region is a major economic, transportation and quality of life issue. While our status as the nation's rail hub has significant economic advantages to the region, it can also lead to significant impacts, both positive and negative, for many of our communities. That balance is what is at play here.

We were supportive of the Surface Transportation Board's (STB) decision to require a full Environmental Impact Statement (EIS) regarding the impacts of CN's proposed physical and operational changes. However, the information

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provided in the draft EIS does not provide the information necessary to make an informed decision on the proposed acquisition of the EJ&E by the CN, and the document falls short in addressing many of the concerns that we outlined in our comments on the EIS scope. Notably, these include the time horizon of the study and capacity constraint analysis, impacts on freight and passenger rail service, and the lack of required mitigation measures. Therefore, the Chicago Metropolitan Agency for Planning offers the following comments to support the STB's decision-making process.

Time horizon of study and capacity constraint analysis

First, the short-term analysis timeframe for EJ&E operations is inadequate. It is not feasible to properly analyze the impacts of this acquisition if we are only looking three to five years beyond the date of STB approval. We requested that the STB's time horizon be extended to at least 10 years after the Board acts. However, the STB's Section of Environmental Analysis (SEA) concluded that the CN's operating plan reasonably predicted the likely future rail traffic growth through the year 2015, under the assumption that the number of trains using the EJ&E rail line would not exceed CN's estimated operating plan. This assumption seems to contradict every industry forecast of rail activity over the next decade. The EIS analysis is not nearly robust enough for us to accept as credible its assertions about EJ&E traffic.

It is commonly believed that the nation and metropolitan Chicago will see a significant increase in freight traffic over the next 20 years. Therefore, there is little merit in CN's assertions regarding future growth in its April 21 Applicant Response Letter.¹ Long-term growth is reasonably foreseeable in Chicago; "flatlining" future growth is much more speculative. While local traffic may vary substantially, the EJ&E will link Asia and the Canadian Prairie Provinces with the U.S. Midwest and South, so it will likely be subject to long-term freight growth trends. Contrary claims are not substantiated. In fact, it might be reasonable to ask why the acquisition has been proposed if CN believes that freight traffic will not grow as most observers anticipate it will.

If future volumes exceed the volumes in CN's operating plan, there may be substantial, adverse consequences on the reliability of other rail operations in metropolitan Chicago, potentially affecting regional and national freight mobility, causing grave economic harm. What concerns us most is that the proposal to shift control of the EJ&E to the CN may facilitate such adverse consequences, especially on local communities. There is also no analysis of how service levels might be expanded on existing CN subdivisions that will see short-term train traffic decreases, given additional pressures to move freight through the region.

Ideally, potential medium- and long-term consequences of additional volumes need to be understood at the time of the STB's decision. Thus, even if the exact trajectory of growth is unknown, a variety of possible scenarios could be simulated to assess potentially negative

¹ http://www.stbfinancedocket35087.com/html/inforequest/request3/08apr21response/08apr21Response_Letter.pdf

impacts. If systematic problems are revealed in such simulations, a plan for addressing those problems could be developed as conditions for approval or mitigation where appropriate.

However, based on material in the Draft EIS record, there is a reticence on the part of the CN and on the part of the STB to engage in long-term forecasts. Therefore, if the STB approves the CN request for control of the EJ&E, CMAP requests the following condition for approval:

REQUEST FOR CONDITION

The following condition is required in the public interest:

1. CN shall agree that increases in the number of trains operating above that outlined in the Operating Plan shall be analyzed in terms of the impact on communities, other rail operations and at-grade crossings of the highway network and shall participate in appropriate mitigation measures.

Impacts on current, expanded and re-routed freight service

Our region's status as a major international freight hub is threatened by rail freight congestion. Northeastern Illinois clearly needs enhanced rail capacity. Work is now underway to implement such additional capacity in the form of the Chicago Region Environmental and Transportation Efficiency (CREATE) Program. CMAP has been among the most-vocal advocates of CREATE, the public-private partnership to reduce freight congestion in northeastern Illinois. The CREATE Program has been adopted as part of the Strategic Regional Freight System in our adopted 2030 Regional Transportation Plan and Transportation Improvement Program. CREATE partners have demonstrated that the program will reduce freight delays in the region.

While the proposed EJ&E acquisition appears to be consistent with CREATE's goals, this EIS process has, again, been a missed opportunity to involve stakeholders in the spirit of public-private partnership, which should include a careful analysis of how the public -- and not just the private sector -- stands to benefit significantly from infrastructure improvements that preserve and create jobs in rail, trucking, warehouse, and other industries. Such an analysis might have helped ease some residents' and elected officials' concerns about the acquisition's impact.

Additionally, regional resources for freight improvements and for improving the fit between rail services and local communities have been set aside for CREATE, not the EJ&E. Diverting state, regional and local resources on improvements to facilitate CN control of the EJ&E would not be consistent with the 2030 Regional Transportation Plan for Northeastern Illinois at this time.

CMAP also remains concerned that concrete action should be taken to assure the long-term viability of Amtrak service now using the St. Charles Air Line. This should include the connection at Grand Crossing proposed in the CREATE Program.

Impact on current, expanded and new passenger rail service

The draft EIS concluded that the acquisition would not have an adverse impact on existing Amtrak service. Additionally, it concluded that it would not preclude implementation of the STAR line or Southeast service, nor would it affect existing Metra passenger rail service. Again, this conclusion seems to run counter to an earlier conclusion that the operating plan will reach capacity on the line. Therefore, we would like to see further analysis and evidence that there will be no impacts.

We do not believe available information is sufficient to determine whether the CN control of the EJ&E will adversely affect the public interest in public transportation. Additional information is necessary and may require mitigation.

REQUEST FOR CONDITION

The following condition is required in the public interest:

2. CN shall agree that increases in the number of trains operating above that outlined in the Operating Plan shall be consistent with commuter rail operations, including any commuter rail operations identified as the "preferred alternative" in the Southeast Service and STAR Line New Starts processes now under way.

Mitigation

Our agency is eager to see CN's detailed commitments to mitigate anticipated negative impacts, and we believe that the STB's ruling should stipulate that those commitments are binding across at least the 10-year horizon that CMAP proposes. This is not evident in the draft EIS. CN's mitigation commitments should address real concerns about safety, noise, vibration, and traffic congestion, along with the quality of air, water, and other natural resources. Out of the 112 total at-grade crossings, the draft EIS lists 15 highway/rail at-grade crossing that require mitigation, but it does not specify any mitigation measures. Included in the draft EIS is a statement requesting assistance from agencies with a regional perspective to work with the CN and affected communities to develop shared mitigation measures. Although discussions regarding mitigation between communities and the CN will no doubt move forward, a fully enforceable mitigation plan must take a regional approach to best utilize public and private funds to resolve our most critical issues. CMAP's offer to provide assistance still stands.

Specifically, the Draft EIS identifies, in Table 6.3-1, fourteen at-grade highway crossings of the EJ&E in Illinois that require mitigation because of delay, queue blocks (spillback), crashes, or exposure. Of those, the following affect the Strategic Regional Arterial (SRA) System in our adopted 2030 Regional Transportation Plan²

² Map: <http://www.cmap.illinois.gov/WorkArea/showcontent.aspx?id=5584>; System Description: <http://www.cmap.illinois.gov/WorkArea/showcontent.aspx?id=8726> (p. 98 ff); System List: *ibid*, (p. 252 ff.)

- Ela Rd (spillback on U.S. 12 SRA), Lake Zurich
- Hough Street (Illinois Route 59), Barrington
- Ogden Avenue (U.S. Route 34), Aurora
- Chicago Road (IL 1), Chicago Heights
- Lincoln Highway (U.S. 30), Lynwood

In addition, the Strategic Regional Arterials listed below were not included in Table 6.3-1. Since the Strategic Regional network was designed to provide regional mobility, the additional delay caused by the proposed action should be mitigated. For each of the Strategic Regional Arterials listed, with the exception of U.S. 14, substantial changes in capacity or connectivity have been planned or programmed:

- Stearns Road (New Bridge over Fox River in preliminary construction. Major construction is expected in 2009.)
- IL 83/IL 60 in unincorporated Lake County (Currently at-grade, 2-lane, skewed angle.)
- U.S. 14 in Barrington (Currently at-grade, 4-lane + median, skewed angle.)
- 119th Street in Plainfield

The SRA System facilitates regional mobility on our arterial highway system. Thus, extensive new delays by freight rail are inconsistent with our regional plan. None of these highways now warrant a grade separation. The grade separations would be unnecessary in the absence of the proposed acquisition. Therefore, some form of mitigation is required as appropriate.

Overall, we do not find the proposed traffic mitigation convincing. We don't have sufficient details to understand how the proposed mitigation will in fact mitigate the impact of the CN. Therefore, we cannot judge the merits of the proposed action.

If the Surface Transportation Board approves the change in control, the following conditions are requested: Additional information and mitigation are necessary.

REQUEST FOR CONDITIONS

The following conditions are required in the public interest:

3. The STB will require the CN to commit to a formal mitigation plan. The mitigation shall include appropriate measures and focus on intersecting Strategic Regional Arterials listed in Table 6.3-1 of the Draft EIS, plus Stearns Road, IL 83/IL 60, US 14 and 119th Street in Plainfield and additional at-grade crossings as necessary. CN will work with CMAP and the communities to determine the impacts of mitigation strategies on the highway network in the vicinity of such mitigation. The implementation of all mitigation projects will be consistent with the planning and programming processes established in northeastern Illinois. Additional traffic mitigation shall be implemented as appropriate.

4. To demonstrate their commitment to addressing the mitigation plan, CN shall place in escrow \$150 million in a traffic impact mitigation fund to implement these improvements as their contribution to the shared cost of mitigation. These escrowed funds shall be available for 10 years. Funds remaining after 10 years shall be returned to CN.

Bicycle and Pedestrian Safety

The information in the Draft EIS is neither complete nor up-to-date. Many bikeways and pedestrian facilities will intersect or parallel CN and EJ&E rail lines. Bikeways and pedestrian facilities are required to connect communities and, as a region, we have adopted policies encouraging bikeways and pedestrian facilities. However, historically, our partner agencies have not had good cooperation from railroad companies in their efforts to construct such facilities. Such cooperation should be required.

REQUEST FOR CONDITION

The following condition is required in the public interest:

5. The STB will require the CN to cooperate with efforts to develop sidewalk and trail crossings and shall respond to all communications regarding such sidewalk and trail development. Please contact us for the additional available resources.

While CMAP fully understands the scope and constraints of the STB's process, the EIS document brings us only marginally closer to determining whether the proposed acquisition is in the region's interests. The EIS lacks a thorough cost-benefit analysis that is necessary to reach such a conclusion. And yet, the STB's EIS is the only mechanism available for conducting that type of detailed review. The STB will ultimately decide whether to approve the acquisition. But based on the EIS, it seems unlikely that the STB's decision will be based on the region's interest, since that criterion is missing from the EIS analysis. The regional benefits should not be just incidental -- in CMAP's view, they should be paramount.

In the event that the STB approves this acquisition, we respectfully request that the conditions we outlined in this letter be required of the applicant.

Sincerely,

Randall S. Blankenhorn
Executive Director

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